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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,369	04/12/2004	Michael J. McMahon	769-333 Div.	3082

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Gerald Levy
PITNEY, HARDIN, KIPP & SZUCH LLP
685 Third Avenue
New York, NY 10017-4024

EXAMINER

SIPOS, JOHN

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,369

Applicant(s)

MCMAHON ET AL.

Examiner

John Sipos

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-46 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 34-46 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

REJECTIONS OF CLAIMS BASED ON FORMAL MATTERS

The following is a quotation of the second paragraph of 35 U.S.C. ' 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 43 is rejected under 35 U.S.C. ' 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedence to the word "elements" of claim 42.

DOUBLE PATENTING

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 34-46 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 34-42 of

compending Application No. 10/208494 in view of Herber(5,519,982). The claims of the compending application set forth a method of manufacturing reclosable bags comprising feeding a film web, folding the web longitudinally, feeding a reclosable zipper between the folded sides of the film web, sealing the zipper to the opposing sides of the web and cross sealing the web and zipper to form bags. This process lacks the specific position of the zipper adjacent the fold of the film web.

The patent to Herber shows a method of manufacturing reclosable bags in Figures 8-26 comprising feeding a film web, folding the web longitudinally, feeding a reclosable zipper 208 into the fold, sealing the zipper to the opposing sides of the web adjacent the fold at 255, cross sealing the web and zipper to form bags with a bottom fold and an opposite open end, filling the bags through the open end at 305 and sealing the open mouth of the bags at 310. The placement of the zipper in the fold provides protection to the zipper by the fold.

It would have been obvious to one skilled in the art to place the zipper set forth in the claims of the compending application adjacent the fold as taught by Herber to provide a protection to the zipper. Although the conflicting claims are not identical, they are not patentably distinct from each other because a person having ordinary skill in the art would have found the claims to be obvious variants of the claims of the compending application. While the claims of the two applications may vary in scope and terminology, the variations and difference would have been obvious to one having ordinary skill in the art.

This is a provisional obviousness-type double patenting rejection.

REJECTIONS OF CLAIMS BASED ON PRIOR ART

The following is a quotation of the appropriate paragraphs of 35 U.S.C. ' 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 34-37 and 39-45 are rejected under **35 U.S.C. ' 102(b)** as being anticipated by the patent to Strand (6,360,513). The patent to Strand shows a method of manufacturing reclosable bags comprising feeding a film web, folding the web longitudinally, feeding a reclosable zipper 20 into the fold carrying sliders 20a, sealing the zipper to the opposing sides of the web adjacent the fold and cross sealing the web and zipper to form bags with a bottom fold and an opposite open end through which the filling takes place (column 13, lines 45 et seq.). Regarding claims 35-38, note the lines of weakness 12,120,132 and claim 43, note the peel seal 50 in Figure 8 of Strand.

The following is a quotation of 35 U.S.C. ' 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38 and 46 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent Strand (6,360,513). The simultaneous folding and weakness forming operation of claim 34 and the stomping of zippers of claim 46 are well known in the art and performing these steps in the Strand process for their inherent advantages would have been obvious to one skilled in the art.

Claims 34-37,39 and 41-45 are rejected under **35 U.S.C. ' 102(e)** as being clearly anticipated by Herber (5,519,982).

The patent to Herber shows a method of manufacturing reclosable bags in Figures 8-26 comprising feeding a film web, folding the web longitudinally, feeding a reclosable zipper 208 into the fold, sealing the zipper to the opposing sides of the web adjacent the fold at 255, cross sealing the web and zipper to form bags with a bottom fold and an opposite open end, filling the bags through the open end at 305 and sealing the open mouth of the bags at 310. Little patentable weight is given to the presence of the slider on the zipper since no manipulative steps are set forth in these claims regarding the slider. All the steps of the process are fully disclosed by the patent to Herber.

Claims 34-46 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent Herber (5,519,982) in view of Gilbert (UK Patent Application 2,085,519) or

alternatively over Gilbert in view of Herber. If weight is given in the claims to the presence of the slider on the zipper, the process set forth by Herber differs from the claimed process in that Herber does not use sliders on the zippers.

The Gilbert reference teaches a process for applying sliders to fastener segments comprising of feeding fastener segments 1, feeding spaced sliders 3 by feeding turret 9 having a plurality of slider holding recesses 10, applying the sliders at spaced locations on to the fastener segments. The slider-carrying fastener segments are then attached to a film web. This operation results in a faster and more efficient operation as discussed on page 1, lines 16-38 of Gilbert. The process set forth by Gilbert differs from the claimed process in that it does not discuss the bag forming process.

It would have been obvious to one skilled in the art to mount sliders to the zipper of Herber before the attachment of the zipper to the film web as taught by Gilbert to provide for a faster and a more efficient operation.

Alternatively, it would have been obvious to one skilled in the art to complete the bag forming process of Gilbert by the process set forth in the Herber patent, namely forming the web that is carrying the zipper and sliders into bags and filling the bags with a product.

Regarding the claims reciting the line weakness (claims 35-37), Herber shows a line of weakness 254 in Figure 18 between the fold and the seals of the zipper and the film.

The simultaneous folding and weakness forming operation of claim 34 and the stomping of zippers of claim 46 are well known in the art and performing these steps in the Strand process for their inherent advantages would have been obvious to one skilled in the art.

ADDITIONAL REFERENCES CITED

The following prior art is made of record but has not been relied upon in the rejection of claims. However, the prior art is considered pertinent to applicant's disclosure.

The patents to Ausnit(074), Bodolay, Belmont and Custer show the feeding of a zipper into the fold of a film web.

The patents to Sullivan and Ferrel show the attachment of zippers with sliders to bags.

The patent to Thomas shows the formation of bags with zippers and sliders with the bags comprising lines of weakness that exposes the slider.

Any inquiry concerning this communication should be directed to **Examiner John Sipos** at telephone number **(703) 308-1882**. The examiner can normally be reached from 6:30 AM to 4:00 PM Monday through Thursday.

The **FAX** number for Group 3700 of the Patent and Trademark Office is **(703) 872-9306**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Rinaldi Rada, can be reached at (703) 308-2187.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Group Receptionist whose telephone number is (703) 308-1148.



John Sipos
Primary Examiner
Art Unit 3721

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